Chicago Metal Maintenance, Inc. *and* International Union of Painters and Allied Trades, Local 8A–28A, AFL–CIO. Case 13–CA–41748

August 23, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on March 9 and April 23, 2004, respectively, the General Counsel issued the complaint on April 28, 2004, against Chicago Metal Maintenance, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On July 12, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On July 14, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed within 14 days from service of it, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated June 22, 2004, notified the Respondent that unless an answer was received by June 29, 2004, a motion for default judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Chicago, Illinois (the facility) has been engaged in the business of metal refinishing and maintenance.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Chicago, Illinois, facility goods valued in excess of $50,000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Union of Painters and Allied Trades, Local 8A-28A, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Frank Lawnicki held the position of the Respondent's owner and president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time employees engaged in polishing, coloring, lacquering, spraying, cleaning and maintenance of ornamental and architectural iron, bronze, brass, nickel, aluminum and stainless steel, and metal specialty work, excluding office clerical employees, guards, and supervisors as defined in the Act.

Since about January 1, 1999, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 1, 2000 to December 31, 2003.

At all times since January 1, 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 10, 2003 and continuing thereafter, the Respondent, by Frank Lawnicki, has failed and

[1] Copies of the charge, amended charge, and the complaint were sent to the Respondent by certified mail. All copies were returned to the Regional Office by the Postal Service marked "unclaimed." The June 22, 2004 letter, which was also sent by certified mail, was not returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB No. 36, fn. 2 (2003), and cases cited there.

refused to make required contributions on behalf of the unit employees to the Union's Health and Welfare and Pension Funds.

Since about October 1, 2003, the Respondent, by Frank Lawnicki, changed the terms and conditions of employment of the unit employees by implementing a new health insurance plan.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing to make required contributions on behalf of the unit employees to the Union's Health and Welfare and Pension funds, we shall order the Respondent to make all required benefit fund payments that have not been made since September 10, 2003, including any additional amounts applicable to such payments as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).[2] We shall also order the Respondent to reimburse the unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn.2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing a new health insurance plan, we shall order the Respondent, on request, to rescind this action.

ORDER

The National Labor Relations Board orders that the Respondent, Chicago Metal Maintenance, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with International Union of Painters and Allied Trades, Local 8A-28A, AFL–CIO, by unilaterally failing to make contributions to the Union's Health and Welfare and Pension Funds on behalf of employees in the following appropriate unit:

> All full time and regular part time employees engaged in polishing, coloring, lacquering, spraying, cleaning and maintenance of ornamental and architectural iron, bronze, brass, nickel, aluminum and stainless steel, and metal specialty work, excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) Unilaterally changing the terms and conditions of employment of unit employees by implementing a new health insurance plan.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all required Health and Welfare Fund and Pension Fund payments that have not been made since September 10, 2003, and reimburse unit employees for any expenses resulting from its unlawful failure to make these payments, with interest, as set forth in the remedy section of this decision.

(b) On request, rescind the new health insurance plan implemented on October 1, 2003.

(c) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic

[2] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 10, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 23, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with International Union of Painters and Allied Trades, Local 8A-28A, AFL–CIO, by unilaterally failing to make contributions to the Union's Health and Welfare and Pension Funds on behalf of employees in the following appropriate unit:

> All full time and regular part time employees engaged in polishing, coloring, lacquering, spraying, cleaning and maintenance of ornamental and architectural iron, bronze, brass, nickel, aluminum and stainless steel, and metal specialty work, excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally change the terms and conditions of employment of unit employees by implementing a new health insurance plan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all required Health and Welfare Fund and Pension Fund payments that have not been made since September 10, 2003, and WE WILL reimburse unit employees for any expenses resulting from our unlawful failure to make these payments, with interest.

WE WILL, on request, rescind the new health insurance plan implemented on October 1, 2003.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above.

CHICAGO METAL MAINTENANCE, INC.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."